

TABLE OF CONTENTS

| | <u>Page</u> |
|--|--------------------|
| I. INTRODUCTION | 1 |
| II. STANDARD OF REVIEW | 4 |
| III. ARGUMENT | 6 |
| A. Both of the Proposed New Counts Are Futile | 6 |
| 1. Plaintiffs' proposed bad faith claim is without merit because Twin City acted reasonably in declining coverage and there is a genuine dispute over coverage..... | 6 |
| 2. Plaintiffs' proposed bad faith count is barred by the applicable statute of limitations | 11 |
| 3. Plaintiffs' request to add a count for declaratory relief is futile and should be denied because there must be evidence of willful conduct by the directors and officers in order for VRG to have recovered and there is no coverage for willful conduct under California law | 13 |
| B. Plaintiffs' Delay In Seeking Leave To Amend Justifies Denial Of The Motion In Its Entirety | 15 |
| C. If Plaintiffs Are Granted Leave To Amend, Twin City Will Suffer Substantial Prejudice | 18 |
| D. The Motion Is Brought In Bad Faith | 20 |
| IV. CONCLUSION | 20 |